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Human rights situations that require the Council's attention

Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana

Addendum

Comments by the State*

* Reproduced as received.

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Annex

Observations by Myanmar on the Report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/25/64)

I. Prisoners of conscience

1. Paragraph 4 of the Report contains the allegations of continued detention of prisoners of conscience and continued arrest and imprisonment for their peaceful political activities.

2. The President's Office issued a pardon under Order No (51/2013) on 30 December 2013, in order to remove the offenses that were thought to be tied with politics for those convicted and prosecuted in connection with other offensives. The order further enabled all cases, under seven laws, being heard by respective courts to be dropped immediately and all ongoing investigations to be closed without any further action.

3. These allegations are unfounded. Nobody is in prison on political grounds. Maintenance of law and order is a key responsibility of the government. Legal action is taken against those who violated the existing laws.

4. It is, in fact, the three locally-recruited INGO workers were arrested and detained under Section 436 of the Penal Code for their involvement in arson attacks on Bo Hmuu Village and Waitharli Village in connection with the communal violence that occurred in Rakhine State in June 2012. They had been employed as driver, security staff and food distributor, respectively. Tun Aung was sentenced under several charges which includes the falsification of national registration certificate, among others. Kyaw Hla Aung was charged under Section 148/333/150 of the Penal Code for his involvement in inciting a violent attack on the civil service personnel who were conducting the population verification pilot project in Thetkaipyin village in Sittway in April 2013.

5. Than Shwe was detained for his involvement in a mob attack on a police station near Ohn Taw Gyi village in Sittway Township, arson attacks on four office buildings and inciting the mob on 9 August 2013. He is facing five charges at Sittway Township Court. The allegation that he is detained because he tried to meet with the Special Rapporteur is not true.

II. Conditions of detention and treatment of prisoners

6. Paragraph 8 of the Report contains the allegations of ongoing practice of torture in places of detention and the absence of accountability.

7. The Report acknowledges the use of CCTV cameras in city police stations of Myanmar. By using CCTV cameras, families and communities can watch interrogations and it would be able to record and use in courts as evidences if necessary. In case of the individuals mentioned in Paragraph 8, disciplinary actions were taken against the responsible police personnel. Section 300 of the Penal Code states: "Whoever, in the absence of any circumstance which makes the act of one of culpable homicide not amounting to murder, causes death by doing an act with the intention of causing death, or with intention of causing bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence to murder". According to Section 300, the case would have to send to the civil court in addition to the police court. The cases mentioned in

the Report were inconsistent with the definition of Section 300 of the Penal Code. The Police disciplinary law includes sections with regard to the criminal acts and crimes with sufficient evidence have been sent to the civil court to charge in accordance with the committed crimes.

III. Freedom of opinion and expression

8. Since August 2012, all publications have been exempted from pre-publishing censorship. In September 2012, the Press Council, comprising representatives of media personnel and journalists, was formed to coordinate media-related matters before a new media law is enacted. In January 2013, the government dissolved the Press Scrutiny and Registration Board. Publication of private daily newspapers has begun since April 2013. Currently, there are eighteen private dailies in the country. Twelve foreign news agencies have opened offices in Myanmar. No restrictions are imposed on the use of internet. People from Myanmar are now increasingly using social media. The most important indicator of a modern democratic society, the freedom to openly discuss and debate politics, is growing as every individual is now able to express their opinions freely through the news media and social networks.

9. The Government of Myanmar is aware of the concerns of domestic media organizations, including the Myanmar Press Council (Interim), and international media organizations over the government's investigation of five journalists. The journalists in question enjoy all their legal rights during the investigation period. The judiciary will adjudicate an independent and fair trial on the said journalists in accord with the judicial principles.

10. The allegations contain that are contain in Paragraph 21 are not true. For instance, during the protest against the visit of the OIC delegation on 15 November, protestors held banners without obtaining a prior permission from the local authorities though they were allowed to stage protest peacefully. A case has been file against those who used such banners without prior permission. This response also answers allegations that are contained in Paragraph 45 of the Report.

IV. Situation of ethnic border areas

11. Paragraphs 34 and 35 contain allegations of sexual violence against Kachin women, 47 cases of gang rape and human rights violations accompanying military offensives and the absence of accountability.

12. Members of the military need to strictly abide by both the military and civilian laws. Prosecutions against perpetrators have been conducted both at the military courts and civil courts. As a party to the 1949 Geneva Conventions, Myanmar has incorporated relevant provisions of the conventions into its Military Code of Conduct. There is zero tolerance policy against any sexual misconduct for the military personnel. From January to December 2013, 8 military personnel who committed rape cases were sentenced by the military courts for their absence from the relevant military units without leave and for drunkenness and they were discharged from the military. Then, they were sent to the civil courts to face the rape charges. Severe punishments were given to them ranging from seven years imprisonment to death penalty. It is unfortunate that the figures contained in Paragraph 34 of the Report have never been verified with the Government.

13. It is regrettable that the Report ignores the reports and complaints made by Shan Ethnic Affairs Group during his last visit to Kachin State. Local Shan community has been threatened by the Kachin Independence Army (KIA) in different ways including attacks

against the villages, forced recruitments of Shan youths, collecting money from the villagers even after agreements have made with the Government after two rounds of peace talks not to commit such acts. The local Shan community staged protests against the KIA in December 2013 to stop the forced recruitment of the young people. These incidents are too obvious to be ignored.

V. Situation in Rakhine State

14. Paragraph 42 alleges no improvements in the human rights situation in Rakhine State. It also alleges that there is no clear action at the State and Union level to address the widespread discrimination and human rights violations occurring there. Paragraph 44 contains allegations of the violations of the right to freedom of movement, access to healthcare, education, livelihoods and places of worship.

15. It is very unfortunate that the Report could not reflect the situation objectively, thereby misleading the readers. There is no restriction on the freedom of movement of the IDPs. Security presence in IDP camps is simply to prevent recurrence of communal violence while the level of distrust between the two communities is still high. The two communities are staying separately because they feel that they are safer that way. It will take time for both communities to heal themselves to relieve from mental trauma. It needs to wait for a reasonable time until both communities regain mutual understanding and trust. Neither the government nor others can force them to live side-by-side. The Government, together with religious and community leaders, has encouraged and facilitated interfaith dialogues and community dialogues in Rakhine State since June 2012. IDPs have access to places of worship and no restriction are imposed on them.

16. The Government established a Central Committee for Implementation of Stability and Development in Rakhine State (CCISD) on March 23, 2013. CCISD is chaired by Vice-President Dr. Sai Mauk Kham and its subcommittees are headed by six Ministers. Six subcommittees on the rule of law, security and law enforcement, immigration and verification of citizenship, social and economic development, temporary resettlement and rehabilitation, cooperation with UN agencies and international organizations and strategic planning have been implementing the policies adopted by the CCISD, the recommendations of the Rakhine Investigation Commission and other necessary actions. Regrettably, the steps taken by the Government have been ignored totally by the Report.

17. It is regrettable that the figures contained in Paragraph 44 of the Report have never been verified with the Government.

18. It is very unfortunate that the Special Rapporteur could not see the situation from the perspective of independence and impartiality although the Government has extended its cooperation and invited him 9 times to see the reality through his visits to the country. The Special Rapporteur not only shied away verifying the allegations, but he himself also has involved in fabricating claims to mislead public opinion. Successive reports fail to mention the feelings and concerns of the Rakhine community.

19. In this connection, Myanmar would like to highlight some missing points in the Report which were mentioned in the Communique issued by Heads of Missions of the European Union in Yangon after their visit to Rakhine State in February 2014 as follows:

> "4. It emerged clearly from the discussions that both Buddhist and Muslim communities have suffered tremendous trauma in recent months. Both communities live in poverty and fear. Despite some radical voices, the mission understands that what both sides have in common is the aspiration of achieving security, peace and prosperity in Rakhine State. Confidence and trust should be restored to create the

basis for a lasting solution through reconciliation, the respect for the rule of law and eventually economic development.

5. In meetings with Rakhine Buddhists, the mission was struck by the pride with which they spoke about their history. They also talked about the perceived threat to their identity and to what they consider their territory, mentioning what they perceive as an imbalanced population growth. The mission took note of their request that all people of Rakhine State should respect the rule of law, in particular the 1982 Citizenship Law. Rakhine Buddhist interlocutors also stressed that all people of Rakhine State should participate in the Government's initiatives such as the verification exercise and the census."

20. In connection with the alleged incident in Du Chee Yar Tan village in Maung Taw Township, the Rakhine Investigation Commission and the Myanmar National Human Rights Commission visited the village in January and in February 2014.

21. The Rakhine Investigation Commission found only evidences for the murder of Police Sgt Aung Kyaw Thein; those who were allegedly killed do not actually exist in Du Chee Yar Tan village and the nearby areas. One lady falsely claimed herself as a witness who saw her one of her relatives killed. However, it is found out that her relative was only detained, not killed. There were also no evidences of recent burial at the burial ground. The allegation that Bengalis who were killed in the conflict were buried there is totally wrong. The commission only found the burial ground covered with bushes.

22. The Myanmar National Human Rights Commission reaches the conclusion: "The news of killing of 8 Bengalis and 40 Bengalis did not emerge in the Ducheeratan village tract and it is therefore concluded that the said news is unverifiable and unconfirmed." Furthermore, the Myanmar National Human Rights Commission states: " As a result of the investigations by District Administrator and Township Medical Officer, it was also learnt from two doctors of the MSF that their clinics did not treat such patients." Full statement of the Myanmar National Human Rights Commission can be found in the 15 February 2014 issue of the New Light of Myanmar.

23. Furthermore, an independent investigation commission with ten members was formed by the President on 6 February 2014 to investigate the reports in connection with the reports on Du Chee Yan Tan village. The commission submitted its report to the President directly on 28 February 2014. The report has not been released to the public yet.

24. In Paragraph 48 of the Report, the Special Rapporteur mentions that the domestic investigations have so far failed to satisfactorily address these serious allegations. He goes on to recommend that the Human Rights Council works with the Government to establish a credible investigation. These observations by the Special Rapporteur are obviously prejudiced. It is to be construed that is prejudging the report of the independent investigation commission formed by the President even before it is released. We will not take his recommendations.

25. Paragraph 49 of the Report shows that the Special Rapporteur does not have a sufficient understanding about the background of the 1982 Myanmar Citizenship Act. Therefore, we are glad to provide the following points for his information;

- The Union Citizenship Act and the Union Citizenship (Election) Act were enacted in 1948. The latter aimed at the foreigners residing in the territory of Myanmar to be able to choose their citizenship. Its validity ended in 1950. At the time of independence in 1948, there were a large number of foreigners and mixed-bloods residing in Myanmar.

- Since the Union Citizenship Act 1948 was drafted during the time of the independence struggle, with limited influence of Myanmar people, it could not safeguard the national interest.

- To address the loopholes of the Union Citizenship Act 1948, the Government sought suggestions and recommendations from the people in 1976. The new Citizenship Law was enacted in 1982 after six years of comprehensive review and discussions.

- Section 3 of the 1982 Citizenship Act stipulates: "Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are citizens."

- Section 6 of the 1982 Citizenship Law stipulates: "A person who is already a citizen on the date this Law comes into force is a citizen." Therefore, persons of Chinese, Indian, Pakistani, Nepali, Bengali decent, etc who became Myanmar citizens in accordance with the 1948 Union Citizenship Act and the Union Citizenship (Election) Act continued to be recognize as Myanmar Citizens.

- In addition to that, Section 23 of the 1982 Citizenship Law stipulates: "Applicants for citizenship under the Union Citizenship Act, 1948, conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body." and Section 42 of the said law stipulates: "Persons who have entered and resided in the State anterior to 4th January, 1948, and their offsprings born within the State may, if they have not yet applied under the Union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence."

- The 1982 Citizenship Act was born out of necessity, without targeting on any particular group. It has no ethnic, religious and cultural dimensions.

- A population verification pilot process took place in April 2013 in Rakhine State. However, some groups made unreasonable demands that they be registered as "Rohingya". They launched a violent attack on the public servants who were carrying out the pilot process.

- It is crucial for the Bengali community to cooperate with the population verification pilot process since it is a starting point for resettlement, access to livelihoods and access to citizenship, among others.

26. Paragraph 51 of the Report contains wrongful conclusions alleging that the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity. This is too pessimistic a view incompatible with his status. It is regrettable that he is not mindful enough to leave unsaid the wrong thing at the tempting moment.

The term "Rohingya"

27. The term "Rohingya" has never existed in our national history. It has also been the case with the censuses taken during the colonial period as well as those taken in 1973 and 1983. The said term is maliciously used by a group of people with ulterior motives. The people of Myanmar never recognizes it. Those who are not among the list of over 100 ethnic groups of Myanmar, according to the country's Constitution and official documents, have always been classified according to their ethnic roots as "Chinese", "Indian", "Bengali", etc. For instance, Myanmar citizens of Chinese descent are mentioned on their national identification card as "Chinese/Myanmar."

28. Due to the limited time to respond to the Report, we are not able to visit other paragraphs yet. But, it should not be construed that we accept them. We still have reservations to some other elements in the Report.